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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/839,482	04/21/2001	Tadamasa Kitsukawa	50P4368	2610
7590	07/01/2005		EXAMINER	
John L. Rogitz Rogitz & Associates 750 B Street, Suite 3120 San Diego, CA 92101			SRIVASTAVA; VIVEK	
			ART UNIT	PAPER NUMBER
			2617	

DATE MAILED: 07/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	09/839,482	KITSUKAWA ET AL.
	Examiner	Art Unit
	Vivek Srivastava	2617

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on ____.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-40 is/are pending in the application.
 - 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) Claim(s) ____ is/are allowed.
- 6) Claim(s) 1-40 is/are rejected.
- 7) Claim(s) ____ is/are objected to.
- 8) Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on ____ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All
 - b) Some *
 - c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. ____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 1.
- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: ____.

DETAILED ACTION

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1 – 40 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 – 33 of copending Application No. 09/840,327. Although the conflicting claims are not identical, they are not patentably distinct from each other because it would have been obvious to modify the claims of copending application 09/840,327 to get the claims in the instant invention.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 1 – 40 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 – 33 of copending Application No. 09/840,546. Although the conflicting claims are not identical, they are not patentably distinct from each other because it would have been obvious to modify the claims of copending application 09/840,327 to get the claims in the instant invention.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 1 – 40 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 - 27 of copending Application No. 09/839,630. Although the conflicting claims are not identical, they are not patentably distinct from each other because it would have been obvious to modify the claims of 09/839,630 to get the claims in the instant invention.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the

applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 19, 22, 27, 30 and 37 are rejected under 35 U.S.C. 102(e) as being anticipated by Klosterman et al (US 6,469,753).

Regarding claims 19 and 27, Klosterman discloses a method for presenting TV channels and Web pages establishing virtual channels on a interactive TV. Klosterman discloses displaying and EPG (fig 6b) on a conventional TV (col 4 lines 24 – 47) and a conventional remote control 1225 (see col 12 lines 52 – 65) for receiving consumer input for establishing a least one virtual channel based on the consumer input and displaying the virtual channel based on selection of the virtual channel (see col 9 lines 18 – 53 and fig 6b). It is noted that the claimed 'consumer data' is met by the received EPG information.

As to claims 22 and 30, Klosterman inherently discloses the content of the virtual channel is stored in a memory remote from the television (i.e. internet).

Regarding claim 37, Klosterman discloses the claimed prompt (see 640 in fig 6b).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1 – 3, 7 – 12, 16 – 18, 20, 21, 23, 26, 28, 29, 31, 34 – 36, 39 and 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Klosterman et al (US 6,469,753) in view of Levitan (US 6,698,023).

Regarding claims 1 and 10, Klosterman discloses a system and method enabling a consumer to access the Internet using a television having at least one television tuner. Klosterman discloses a set-top box and television for receiving a displaying an EPG enabling channel selection (see fig 1). It is noted that the TV and/or set-top box inherently comprises a tuner. Klosterman further discloses the EPG provides a television viewer with a plurality of channels and a virtual channel (see fig 6b, col 9 lines 18 – 54), wherein when the user selects the virtual channel the user can view a webpage.

Klosterman fails to disclose the claimed periodically receiving updates to the web page at the television, such that the virtual channel is periodically updated and updating of changing the web page associated with the virtual channel, such that a first version of the web page is displayed via the virtual channel at a first time, and a second version of the web page is displayed via the virtual channel at a second time.

In analogous art, Levitan teaches a television internet access system, wherein web pages can be updated (see col 3 lines 48 – 59). It would have been obvious to modify Klosterman to include the claimed limitations. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Klosterman to include the claimed limitations for the benefit of receiving the most up-to-date web pages.

Regarding claims 2 and 11, Klosterman discloses downloading i.e. storing web content in a computer within a television (see col 4 lines 15 – 31 and col 3 lines 48 – 58).

As to claims 3 and 12, Klosterman inherently discloses the content of the virtual channel is stored in a memory remote from the television (i.e. internet).

Regarding claims 7, 8, 16 and 17 the combination of Klosterman and Levitan fails to disclose the claimed receiving consumer input via remote control, using the input to establish a consumer profile, using the consumer profile, establishing at least one virtual channel or updating at least one virtual channel on the television.

Official Notice is taken it would have been well known to generate a consumer profile using a remote control, storing the input inside a television at a first time and then transmitting the input to a site remote from the television at a second time for the benefit of receiving customized updated information. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Klosterman to include the claimed limitation for the benefit of receiving updated customized web pages.

Regarding claim 9 and 18, the combination of Klosterman and Levitan discloses the claimed limitation, wherein Levitan discloses sending information regarding web page updates, comparing the web page data with personalized profile data, to store and present the web pages to the user (see col 5 lines 58 – 67).

Claims 20 and 28 are met by the discussions above.

Regarding claims 21 and 29, Klosterman fails to disclose storing virtual content in a memory within a TV. In analogous art, Levitan teaches a television internet access system wherein web pages can be downloaded (see col 4 lines 15 – 31) and stored in a television (see col 3 lines 48 – 65) for the benefit of receiving updates. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Klosterman to include the claimed limitation for the benefit of receiving up-to-date web pages.

Regarding claims 23, 31, 39 and 40 the combination of Klosterman and Levitan discloses the claimed subject matter, wherein Levitan discloses the claimed wireless path (see col 3 lines 48 – 52).

Claims 26 and 34 are met by the above discussions.

Regarding claims 35 and 36, Klosterman discloses the claimed prompt (see 640 in fig 6b).

Claims 4 - 6, 13 – 15, 24, 25, 32, 33 and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Klosterman (US 6,469,753).

Regarding claims 4 and 13, the combination of Klosterman and Levitan fails to disclose the claimed DSL. Official notice is taken that DSL is well known to provide higher data transfer speeds. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the combination of Klosterman and Levitan to include the claimed limitation to enable high speed data transfer.

Regarding claims 5 and 14, the combination of Klosterman and Levitan fails to disclose the claimed cable modem. Official notice is taken that using a cable modem is well known to provide higher data transfer speeds. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the combination of Klosterman and Levitan to include the claimed limitation to enable high speed data transfer.

Regarding claims 6 and 15, the combination of Klosterman and Levitan fails to disclose the claimed VBI. Official Notice is taken transmitting data in the VBI provides an efficient means for transmitting data. Therefore, it would have been obvious to modify Klosterman to include the claimed limitation to provide an more efficient means for transmitting data.

Regarding claims 24, 25, 32 and 33, Klosterman fails to disclose the claimed receiving consumer input via remote control, using the input to establish a consumer profile, using the consumer profile, establishing at least one virtual channel or updating at least one virtual channel on the television.

Official Notice is taken it would have been well known to generate a consumer profile using a remote control, storing the input inside a television at a first time and then transmitting the input to a site remote from the television at a second time for the benefit of receiving customized updated information. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Klosterman to include the claimed limitation for the benefit of receiving updated customized web pages.

Regarding claim 38, Klosterman discloses the claimed prompt (see 640 in fig 6b).

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Matthews, III et al (US 6,025,837) – EPG with hyperlinks

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vivek Srivastava whose telephone number is (571) 272-7304. The examiner can normally be reached on Monday – Friday from 9 am to 6 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chris Kelley can be reached on (571) 272 – 7331. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Vs
6/23/05



VIVEK SRIVASTAVA
PRIMARY EXAMINER